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**Company Registration and Licensing: Focus of GEGI Interventions
(C.7.2)**

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COMPANY REGISTRATION

Company registration is relatively simple and straight-forward and is not reported to be an impediment to investment and business. The procedures are well-known¹ and there are facilities to have legal offices undertake the process for fairly standardized fees.

The key issue with the system is that company registration is done in up to 73 local courts, and there is no real centralization or collation of the data. As a result, it is at best time-consuming and costly to establish records, from whether a name is already in use, to who owns a company, to there being claims over a business.

In much of its work, GEGI is looking at issues of registration. In particular, work in improving access to credit has highlighted a number of legal and institutional gaps in forming a credit bureau (a register of information on credit performance) or a moveable property registry.

In the course of this work, the need for reform of company registration has been noted. One of the critical elements to improving credit access and the successful operation of secured transactions is the use of exact names of debtors, which are often business entities. Therefore, it is necessary for both those who file notices and those who search for notices by name of the debtor to have ready access to exact name information.

The company registration process in Georgia is not conducive to ready and reliable access to information on business entities, with registration dispersed across the country. None of the registries is automated, so none of the information is available over the internet or by dial-up query. The registries generally do not respond to inquiries over the telephone. The only way for a person who needs exact information about an entity is to either go to the court and submit a request, or to have an agent in the locale of the court do so. That, of course, assumes that the person inquiring can determine with certainty in which court to look, not an easy determination in many cases. Once a request is submitted, the time of response varies, but is rarely immediate.

Another problem with the existing process is that a name may be used by multiple entities in Georgia because registration is local, and names are not checked centrally. It is possible, therefore, that a person who searches by the name of a business debtor may get a list of security interests that includes those filed against other debtors of the exact same name, making it very difficult to determine the situation of the debtor in which the person is interested.

It is noted that the need for reliable and ready access to information about business entities is not limited to the context of secured transactions, but that it is often needed for other types of business decision-making. The current company registration process may also require disclosure of private information that may not be relevant to the purposes of registration. Finally, it was noted that the process for admission of foreign entities to do business in Georgia may be duplicative if the foreign entity is to do business in more than one region of the country.

¹ See overleaf.

STEP-BY-STEP REGISTRATION OF A LIMITED LIABILITY COMPANY

1. Notarize founders' documentation overseasⁱ

2. Legalize those documents at Georgian Embassy

3. Translate founders' documentation into Georgian and notarize translation

4. Obtain valid address (premises)

5. Pay capital contribution into a commercial bankⁱⁱ

6 . Obtain appraisal of any non-monetary contribution from an auditorⁱⁱⁱ

7. Draw up an application letter^{iv}

8. Pay registration fee^v

9. File an application to the Court^{vi}

10. Obtain a seal^{vii}

11. File an application to the Tax Authorities^{viii}

12. Notarize facsimile of a signatory and the signatory's passport

13. Open a bank account^{ix}

14. Report bank account details to the Tax Authorities

ⁱ (For foreign applicants) These documents are power of attorney, charter and resolution of founders on the appointment of directors.

ⁱⁱ The choice of the commercial bank is up to the applicant. A bank receipt for the contribution must be submitted to the Court under step 9.

ⁱⁱⁱ This step should be taken in case of in-kind capital contribution. The choice of auditor is up to the applicant. The total of cash and in-kind contributions should be no less than the minimum authorized capital of 2,000 Lari.

^{iv} The application letter should include:

- a) company name (company name can be any title, however it should have LLC or Limited liability included in it);
- b) organizational and legal form;
- c) location (juridical address) (although it is advisable to submit the address of the premises as the legal address of the company, the law does not make such requirement);

- d) subject of the activity;
- e) data on beginning and finishing the fiscal year;
- f) name, first name, date and place of birth, occupation and place of residence of each founder (in case of an individual founder no documents proving this information are required; in case of legal person this information should include the name and registration documents);
- g) power of attorney (notarized);
- h) the sum of contribution by each founding partner, and their shares accordingly;
- i) the name, first name, date and place of birth, occupation and home address of each director;
- j) the sum of the authorized capital (with supporting documents , e.g. bank receipt).

^v The registration fee for LLC is US\$80 equivalent in Lari. This amount is paid at any commercial bank and a receipt has to be submitted to the Court.

^{vi} The application is filed to the Court of relevant jurisdiction according to the legal address of the company. In its turn, the Court has to issue a registration decision or reject the registration within five calendar days. Once the company is registered, the Court will send its decision on registration to the State Statistical Department and the Tax Authorities.

^{vii} A company seal is not required by law. However, it is necessary in practice and typically includes the name of the company in Georgian and English, along with the company's tax identification number. While it is no longer required by law, some seal-makers still require local police authorization for seals – this can be obtained for approx. 10 Lari.

^{viii} Within 10 days of registration, the new company should file its package of registration applications (which can be obtained at a local tax agency) and the company's charter (notarized for a Georgian company; notarized and legalized for a foreign company) at the Tax Department, in order to get a Tax Identification Number (TIN). Since court decisions are notified to the Tax Department only once a month, in practice it is advisable to include the Court decision on registration to the package.

^{ix} The company should submit the following documents to its chosen commercial bank:

- a) Registration certificate from the Court,
- b) Notice from Tax Department indicating TIN,
- c) Charter of the Company,
- d) Notarized facsimile of a signatory and
- e) Notarized copy of signatory's passport (ID).

LICENSING

The Legal Framework

The Laws on Licensing and on License Fees (1999) sought to rationalize licensing in Georgia, and in this context reduced the number of activities subject to licensing from 120 to 25². These laws were misused which led to the passing of the Law on Principles for Issuing Licenses and Permits for Entrepreneurial Activities in 2002. This new framework law covers all aspects of licensing, including prohibition of new licenses and instruments tantamount thereto inconsistent with the principles laid down, which include:

- Equality before the law;
- Safety and protection of the life and health and living conditions of individuals;
- Protection of the entrepreneurs' interests;
- Protection of the state security and public safety;
- Protection of the rights and interests of the consumers.

The Law shows marked influences from laws relating to permits and licenses passed in other transition economies in Eastern Europe that were drafted in accordance with the “four freedoms” of the EU, i.e. the free movement of people, goods, services and capital which constitute the basis for EU legislation, but the Law falls short of these goals in comparison with more liberal legislation adopted in other countries (for example, see the provisions of the Polish Law on Commercial Activity that came into force in 2001), and thus fails to ensure that state bodies *no longer have unlimited power to restrict commercial freedom through a complicated and often non-transparent regime of licenses and permits*.

Licensed Activities

International practice has leaned towards the removal of most licenses as regulatory instruments. While the Georgian legal framework for licensing is clearly an attempt at protecting the public and the state during transition, it exhibits certain weaknesses perhaps not foreseen by legislators. These shortcomings in turn make the system irrational. In many cases there is an apparent duplication of effort when both licenses and permits regulate the same segment of the same type of activity. This leads to “misunderstanding”, additional administrative barriers for entrepreneurs, and an inefficient state licensing system.

Where public safety and health, state security, and public order are used as the criteria for imposing licenses, the following overall comments can be made on the list of activities subject to licensing set down in the framework laws³:

1. The criteria according to which the list was created are unclear. While the principles of protecting public health and safety and state security are the stated motivation, several licenses do not appear to be grounded in such.
2. The list includes activities which by their character would be better regulated by time-bound permits rather than by once-and-for-all licenses (eg. construction, planning).

² There are also sectoral regimes for banking, insurance, design and construction, and pharmaceuticals.

³ Per the Law on Principles for Issuing Licenses and Permits for Entrepreneurial Activities, and the Law on Fees for Licenses and Permits.

3. The system of fees for licenses needs to be reassessed: in many cases they appear too low to recover the administrative costs involved in issuance and enforcement; this may in turn encourage unofficial payments to induce officials to undertake the work. The fee scales, though they vary greatly, do not seem to correspond to any standard rationale, whether reduction of frivolous applications, life of the license, potential risk, or scale of activity. This suggests there is need to revisit the fee schedule, both within an activity and across all licensed activities, based on criteria to be selected.
4. Additional detailed definition of the activities requiring licensing is necessary in many cases, because the list does not provide a clear explanation of what is actually meant by a given term. Terms like “*all other activities of this kind*” should be removed to minimize costly “misinterpretations”.
5. The duration of licenses should be shortened in cases where additional protection for the public is desirable (eg. healthcare). This would further benefit from clear instructions on monitoring licensed activities once licenses have been issued.

Specific comments on the general groupings of activities requiring licensing under the laws include:

I. Licenses for Insurance and insurance mediation activities – State Insurance Monitoring Service of Georgia

It is unclear why an extensive list of 17 types of activities is necessary. Fewer or a single insurance license for all insurance types, with commensurate fee, might make the system more efficient and more effective.

II. Licenses for activities related to Banking, non-bank depository and currency exchange sites – National Bank of Georgia

The functional essence of licensing of banking activities is unclear, given other sector-specific laws. Given the number of exchange bureaus and non-bank depositories in the market, it is uncertain whether licensing actually does take place; short-term permits might be more effective.

III. Licenses for activities related to regulated Securities market agents, asset managing companies and special depositaries – National Securities Commission of Georgia

The reasoning behind the inclusion of most activities in this segment is unclear (i.e. activities of stock brokers, stock registrars, central depositors, broker firms, trust funds and special depositors). These activities might be better governed by certification of individuals or by professional associations rather than state licensing.

IV. Licenses for activities related to Medicine and Pharmacy – Ministry of Labor, Health and Social Security

The necessity of licensing in these segments is of particular importance and cannot be undermined. However, the approach used in regulating these activities is unclear, including accounting for the possible risk of damage to public health. The need to break down and license each activity (rather than licensing a facility and qualifying individual participants) is uncertain. There are also some concerns over the necessity for cumbersome re-licensing of doctors qualified abroad or medicines internationally recognized.

V. Licenses for activities related to Building and construction planning – Ministry of Urbanization and Housing

This segment combines unrelated activities, and thus includes licenses on certain activities which should be removed (eg. license for construction project planning) while extending lifelong licenses to activities which should be governed by activity-based permits with tight scrutiny (eg. engineering exploration and research).

VI. Licenses for activities related to Educational activities – Ministry of Education

The schedule of fees is unclear: fees increase with the level of education and are not related to the size of the establishment (so that long-term license fees are low for large facilities but can act as a barrier to entry for smaller ones), and seems to accord no attention to the age of the students involved (eg. one might expect pre-school education to be more closely monitored). Professional schools might also need to provide extra guarantees where dangerous machinery is used. The rationale behind the breakdown of educational courses (eg. licensing of individual subjects rather than a facility) is also unclear.

VII. Licenses for activities related to Audit – Auditing Board of Parliament

Activities in this field might better be governed by industry associations, with qualification of individuals, rather than licensed activities.

VIII. Licenses for activities related to Metrology and production and repair of measurement devices – State Department for Standardization, Metrology and Certification

This segment relates more to standardization and accreditation than to licensing and should be removed from the list.

IX. Licenses for activities related to production, repair and sale of Armaments and ammunition – Ministry of Justice

While these kinds of activities clearly should stay in the licensed list, the fee rates are surprisingly low, which may facilitate undesired entry.

X. Licenses for activities related to Maritime passenger transportation – Ministry of Transport

It is not clear what type of activity this license covers. Is it related to safety of passengers or other factors? Seasonal permits for operating pleasure crafts might be more suitable.

XI. Licenses for activities related to Customs – Ministry of Finance (Customs)

The reasoning behind licensing customs broker and customs freight forwarders is unclear: there is no apparent threat to public health or safety. The questions of trust and confidentiality would be better addressed at the industry level (i.e. professional qualifications). Clarification is needed over whether customs brokerage and freight forwarding require a license or another regulatory instrument.

XII. Licenses for activities related to utilization of Nuclear and radioactive substances – Ministry of Environment and Natural Resources Protection

The fees for these activities are extremely low considering the work involved in issuing and enforcing a meaningful license, and the likely revenues of the activities. Moreover, it is necessary to create a detailed

scheme of fees for various types of activities in this segment, to differentiate between regular use of small amounts of the materials (eg. for research laboratories) and large-scale, high-risk projects (eg. power plants).

XIII. Licenses for activities related to Food (incl. children's food) and tobacco production sphere – Ministry of Agriculture and Food

Activities in this segment are more related to standardization than licensing. A more detailed explanation of the activities involved in this sphere, and the motivation behind licensing, should be made. It is likely that production of food with specific health concerns (baby food, special dietary foods) would still require regulation, but licensing of all food production is cumbersome and doubtful yields effective consumer protection.

XIV. Licenses for activities related to Communication and postal services – National Communications Commission

The schedule of fees for this segment might be reassessed because in a majority of cases they are low. A more comprehensive list should be developed to distinguish different types of activities, in particular between “simple” use (eg. a radio station) and higher “public risk” activities (eg. broadcast facilities).

XV. Licenses for activities related to Veterinary activities and production and sale of pesticides and agrochemicals – Ministry of Agriculture and Food

The duration and fee schedule for this activity segment do not appear to provide significant control over spheres which carry relatively high risk potential to public health. The low level of fees – perhaps motivated by widespread seasonal and rural need for such licenses – likely falls short of the administrative costs of issuing and monitoring these licenses, with consequences for consumer protection.

XVI. Licenses for activities related to oil, gas and their byproducts' utilization, refining and transportation – State Oil and Natural Gas Regulatory Agency

Licensing in this segment seems to be the most developed and detailed, yet some activities still require further detail. The schedule of fees may also need revisiting, with relatively low (and not size-based) fees for high-risk activities such as refining.

XVII. Licenses for activities related to utilization of Natural resources (excluding utilization of natural gas, oil, forest and land) – Ministry of Environment and Natural Resources Protection

This section combines many natural resources of different attributes, and thus provides inadequate regulation. For instance, short-term permits may be more suitable for use of above-ground water resources (eg. non-effluent type), hunting grounds or fishing, while more stringent licensing is required for potentially deteriorating or depleting use of natural resources.

XVIII. Licenses for activities related to Environment protection – Ministry of Environment and Natural Resources Protection

The definition of activities in this segment is not clear. Typically, environmental protection would not be undertaken on economic grounds (it entails incurring costs not recouped for “the greater good”) and the necessity to regulate “altruistic” behavior is ambiguous.

XIX. Licenses for activities related to Mining and smelting of mineral resources – Ministry of Environment and Natural Resources Protection

The fees for these activities need to be reassessed, if they are to reflect either the administrative costs of the licenses or the cost to the public of natural resource exploitation. Activity-based permits might also be more relevant to these types of activities rather than lifelong, across-the-board licensing.

XX. Licenses for activities related to Hydro-metrology – State Department for Hydro-metrology

No comments or recommendations are offered for this particular area due to its high specifics.

XXI. Licenses for activities related to Geology – State Department for Geology

The existing scheme of fees requires revision, given the typically large scale of such activities. Duration and physical scope may also need addressing.

XXII. Licenses for activities related to Printing and keeping of strictly recorded documentation – Ministry of Finance

Detailed explanations of the three categories of publishing need to be given, as well as the motivation for licensing each one. Confidentiality and state security needs might better be tackled by other mechanisms.

XXIII. Licenses for activities related to operation of Laboratories for agrochemicals, soil protection and quality assessment of agrochemicals – Ministry of Agriculture and Food

This segment should be governed by more effective laboratory accreditation, rather than licensing.

XXIV. Licenses for activities related to production of Seeds and saplings – Ministry of Agriculture and Food

The activities in this field should be governed by standards and certification rather than licensing.

XXV. Licenses for activities related to Animal farming – Ministry of Agriculture and Food

The reasoning behind inclusion of farming into licensed activities list is unclear and dubious. The same approach should be applied to this segment as activities related to production of seeds and saplings.

International Best Practice for Licenses and Permits

The trend in international best practice seeks to reduce significantly the areas of economic activity which require either a license or permit. It also sets forth the grounds for limiting the freedom to undertake economic activity by introducing a *uniform regime for granting licenses and permits*. Any expansion of the requirement for a license or permit would require an actual amendment to the Law itself.

The basic difference between a permit and a license is that a permit cannot be denied if all legal requirements for granting it are met, whereas a license requires administrative approval. Thus a license is “granted” while a permit is “issued”. Georgian Law has expanded the number of activities for which neither a license nor a permit is required. This approach might be carried still further, by converting some licenses under current legislation into permits, while some activities currently requiring a license or permit would require neither.

Progressive legislation provides for an entrepreneur who intends to commence an activity that is subject to licensing to be granted a temporary or “promissory license” whose validity cannot be less than 6 months and which may be conditional on fulfillment of conditions applicable to the given activity. The appropriate licensing organ can then grant or refuse the license, make changes to it or withdraw it in the course of an administrative procedure, for which there is a right of appeal under the Code of Administrative Procedure. Georgian Law currently lacks such a mechanism, but does meet international standards by providing that applications for licenses that are not approved during the timeframe prescribed by legislation are automatically issued.

As for permits, the body responsible for issuing a permit checks to ensure that the application fulfills the necessary legal requirements applicable to the activity. The permit *must* then be issued if those conditions are met. As in the case of licenses, all permit decisions may be appealed under the Code of Administrative Procedures.

Licenses

The more progressive license and permit legislation in Central and Eastern Europe limits the areas of economic activity requiring licenses from the relevant authority to the following:

1. prospecting for and exploitation of subterranean natural resources;
2. manufacture and trade in explosive materials, armaments and ammunition, as well as goods and technology intended for use by the military and police;
3. manufacture, processing, storage, transport, distribution of fuels and energy, and trade therein;
4. bodyguard and property security services;
5. air transport and performance of other aviation services;
6. construction and exploitation of toll highways and express roads;
7. administration of rail lines and performance of rail transport; and
8. distribution of radio and television programs.

The introduction of new or additional licenses for activities that are currently license-free and that have a particular significance for state security or for some other important public interest, may be made *only* by means of amendment to the applicable law. And as noted above, each decision denying the issuance of a license may be appealed administratively.

Permits

The more progressive license and permit legislation in Central and Eastern Europe limits the areas of economic activity requiring permits from the relevant authority to the following:

1. manufacture of alcoholic beverages;
2. tobacco production;
3. detective services;
4. production and distribution of automobile registration plates;
5. airport administration;
6. courier services and postal services of a public character;
7. telecommunication services;
8. production of pharmaceuticals and medical materials, operation of pharmacies and pharmaceutical and medical warehouses and customs houses;

9. domestic and foreign trade in livestock, except for sales performed by domestic operators of hunting leaseholds;
10. the offering of tourist services for domestic hunting by foreigners and for hunting abroad;
11. customs agencies;
12. wine production; and
13. international transport.

Licenses and permits that were issued prior to the coming into force prior to any amendments to the law should remain valid for the period for which they were issued, or become permits for the relevant period.

Conclusions

Extensive reform by Government has led to adequate framework licensing legislation. Yet several problems remain in practice. While procedures are not unduly complicated, corruption and bribery often “facilitate”. As a result, licenses are issued (or not) with little basis. The twin consequences are that licenses are empty of true meaning – they do not protect public or state interests, nor consumers or entrepreneurs; and current licenses can foster unfair competition – since anyone can obtain a license, there is no incentive to incur the costs of abiding by the rules, making for an uneven game between “honest” and “dishonest” players. In the longer term, poor state licensing may discourage business from valuing qualified human capital and deplete Georgia’s resource endowments.

In principle, state licensing should be kept to a minimum, since it imposes costs not only on businesses but also on Government. Moreover, any corruption or abuses of power associated with regulation fuels the private sector’s mistrust of Government: most regulatory measures are still seen as (unnecessary) instruments of government interference; there is no true recognition of the role the state can play in improving the business environment and preserving the common good, in cooperation with business.

An attempt at trimming the list of licensed activities is made above. Further study will support the removal of specific licensing requirements, based on the activities and their impact on safety and security, and to encourage a review of the licensing system overall (principles translated into practice, monitoring of licensed activities post-issuance). Another key to improving the licensing regime will be clear implementing regulations, for both issuance and enforcement. While the framework laws do give some direction, more specific and standardized procedures are still needed, in particular on monitoring.

The OECD Checklist for Regulatory Quality

1. Is the problem correctly defined?
2. Is government action justified?
3. Is regulation the best form of government action?
4. Is there a legal basis for regulation?
5. What is the appropriate level (or levels) of government for this action?
6. Do the benefits of regulation justify the costs?
7. Is the distribution of effects across society transparent?
8. Is the regulation clear, consistent, comprehensible and accessible to users?
9. Have all interested parties had the opportunity to present their views?
10. How will compliance be achieved?

Source: www.regulatoryreform.com

As state licensing is reduced, industry may wish to introduce its own licensing. In many cases, an industry is better able to check the qualifications of a potential agent, and more apt to monitor and regulate legitimate

professional behavior. It is important to bear in mind however that incumbents have a natural inclination to keeping new competition out of their market. Should industry choose to license activities therefore, attention will have to be paid to protecting potential newcomers and thus consumers. This would likely best be addressed in the general context of consumer protection.

Local Licenses and Permits

Although the Law on Principles for Issuing Licenses and Permits for Entrepreneurial Activities recognizes 25 major licenses, over 200 activities actually fall under licenses or permits once the local government level is accounted for. Local permits⁴ are issued under the Laws on Local Self-Government (1999) and on Local Charges (1998), each municipality setting its own regulations. The laws do not specify the purpose or scope of permits, leading these to be used more for (local) revenue collection than as regulatory tools. Permit issuance and enforcement are reportedly opaque and arbitrary, leading to corrupt practices and stripping the permits of any public good function. Such a system can act as an obstacle to newcomers (who do not have the knowledge or connections required) and impose undue burden on individual entities.

It would be only partly effective to review the national-level licensing system and ignore locally administered permits. Further study will be required to determine the intent, validity and operation of local permits. Corruption is reportedly particularly high at the local permits level, both in issuing and enforcement. This suggests potentially significant administrative barriers – especially for locally-based smaller businesses – which will need to be considered in the general framework of licensing and permit regulation.

⁴ Either one-time permits issued for construction, and use of public places; or permits for ongoing activities such as trade, local transportation, parking, and outdoor advertising.